IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

CRP.No. 1312 of 2000(F)

(CC.679/1973 of TALUK LAND BOARD, CHITTUR)

REVN. PETITIONER/RESPONDENT NO.12:

N. ALAGIRISWAMY, S/O. A. NARAYANASWAMY CHETTIAR,
RESIDING AT S.S. KOVIL STREET, POLLACHI, TAMIL NADU.

BY ADV. SRI.V.CHITAMBARESH
ADV. SRI.S.KRISHNA PRASAD

RESPONDENTS/RESPONDENTS/RESPONDENTS 1 TO 11, 13 & 14:

1. THE STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.
2. THE TALUK LAND BOARD, CHITTUR REPRESENTED BY ITS CHAIRMAN, PALAKKAD.
3. THE TAHSILDAR, CHITTUR, PALAKKAD.
4. MARAKATHAM, W/O. PALANISWAMY GOUNDER.
5. MAHESWARI VENKITACHALAPATHI PERIYASWAMY, D/O. PALANISWAMY GOUNDER.
6. KARTHIKEYAN, S/O. PALANISWAMY GOUNDER.

   (RESPONDENTS 4 TO 6 ARE RESIDING AT KARUMPAPURAM P.O., MUTHUR, POLLACHI, TAMIL NADU.)
7. JOSEPH.
8. SILVI.
9. AUGUSTIN.

10. ANI.

11. MINI.

12. SAJI.

13. JIJI.

14. RAJU.

(RESPONDENTS 7 TO 14 ARE RESIDING AT KARAKUNNEL HOUSE, CHUVANNAMANNU P.O., THRISSUR – 680 052.)

15. R.P. SWAMIAPPA GOUNDER.

16. NANDAKUMAR.

(RESPONDENTS 15 AND 16 ARE RESIDING AT R.V.P. PUDUR, ERUTHEMPATHY, CHITTUR, PALAKKAD.)

R1 TO R3 BY GOVERNMENT PLEADER SHRI THOMAS JOHN AMBOOKEN.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P.NO. 1312 OF 2000

ORDER ON C.M.P. NO. 2674 OF 2000 IN C.R.P.NO. 1312 OF 2000

DISMISSED.

07.12.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

C.R.P. No. 1312 OF 2000

Dated this the 7th December, 2007

O R D E R

This Civil Revision Petition is filed by one Alagiriswamy, who is stated to be respondent No. 12 in C.C.No. 679 of 1973 on the file of the Taluk Land Board,Chittur. He challenges the order dated 26.04.2000 passed by the Taluk Land Board. Ceiling proceedings were initiated in 1973. Even after 24 years, a finality has not reached and the order which is now passed by the Taluk Land Board is an order which does not stand scrutiny for a moment.

2. Ceiling proceedings were initiated, as stated earlier, in 1973. In the report submitted by the Special Deputy Tahsildar dated nil (which was evidently one submitted before 31.07.1976) it is stated that an extent of 67.29 acres of land covered by Patta No. 32 of Eruthempathy village belonged to R.P. Swamiappa Kounder and K.P. Peria Kounder and that they had equal rights . K.P. Peria Kounder died prior to 01.01.1970 and his rights devolved on his only son Palaniswamy Kounder, who is the declarant in C.C.No. 679 of 1973. It is also stated in the report thus:

> *"Out of 67.29 acres of lands covered by Patta No. 32 of Eruthempathy village, an extent of 38.23 acres is claimed to be held by the tenants as detailed in Annexure E. All the three tenants have acquired all rights, title and interest of the landlord under section 72F of the Act, as per the order of the LT, Chittur as shown in Annexure E. As such, the extent of 38.23 acres shown in Annexure E cannot be held as lands possessed by the registered holder. After excluding the extent held by the tenants, the extent of lands over which the declarant holds ½ share comes to 29.06 acres. The declarant's share works out to 14.53 acres*

as detailed in Annexure A. "

The report is concluded by saying that the declarant's family is entitled to retain an extent of 13 acres 88.5 cents shown in Annexure C to the report and the family is not liable to surrender any land as excess land. The report of the Spl. Deputy Tahsildar was accepted and the Taluk Land Board passed a cryptic order in a cyclostyled form, where only the dates and extent are filled up, holding that the family of the declarant consists of four members and they can retain 15 ordinary acres equivalent to 10 standard acres. It was also held that the total extent of land held by the family is 14.53 ordinary acres. Thus, as per the order dated 31.07.1976, the declarant was not liable to surrender any extent of land.

3. Proceedings under section 85 (9A) of the Kerala Land Reforms Act were initiated and the Taluk Land Board decided to review the case . The case was reviewed and notices were issued to all the interested parties. The Taluk Land Board, thereafter passed the present order dated 26.04.2000,

4. The petitioner, Alagiriswamy traces his title to Augustine and Annie as a per a registered assignment deed No. 572 of 1997, S.R.O., Kozhinjampara) in respect of 3.19 acres. Augustine and Annie purchased the property from Swaminathan in the year 1985. Swaminathan had obtained the purchase certificate as per order dated 26.06.1976 in O.A.No. 763 of 1972 and he had obtained purchase certificate No. 2667 dated 26.06.1976. Swaminathan had got the property from Palanithevar as per the assignment deed dated 01.06.1972 . Palanithevar claimed that he was a tenant under the declarant Palaniswamy. In short, the petitioner claims that he is an assignee of the tenant. Learned counsel for th petitioner contends that the rights of the three tenants were recognised by the Taluk Land Board in the order dated 31.07.1976, based on the

report of the Special Deputy Tahsildar that those three tenants were entitled to fixity of tenure and that they were in possession of the lands.

5. Section 85 (9A) of the Land Reforms Act reads thus:

> *"(9A) Power of Taluk Land Board to review its decision.- Notwithstanding anything contained in this Act or in the Limitation Act, 1963 (Central Act 36 of 1963) or in any other law for the time being in force, or in any judgment, decree or order of any Court or other authority, the Taluk Land Board may, if it is satisfied that its decision under sub-section (5) or sub-section (7) or sub-section (9) requires to be reviewed on the ground that such decision has been made due to the failure to produce relevant data or other particulars relating to ownership or possession before it, or by collusion or fraud or any suppression of material facts the Taluk Land Board may review such decision after giving an opportunity to the parties of being heard and pass such orders as it may think fit:*
>
> *Provided that the Taluk Land Board shall not reopen any such case after the expiry of three years from the date of coming into force of the Kerala Land Reforms (Amendment) Act, 1989."*

A review under sub-section (9A)of Section 85 of the Act can be had if the Taluk Land Board is satisfied that the decision under sub-section (5) of Section 85 requires to be reviewed on the ground that the said decision has been made due to failure to produce relevant data or other particulars relating to ownership or possession before it or by collusion or fraud or any suppression of material facts. Therefore, necessarily, after deciding to re-consider the matter , the Taluk Land Board has to consider the question afresh and also to decide how the claim made by all the three persons as tenants could not be accepted. The Taluk Land Board was also bound to decide whether the exclusion of the extent allegedly in the possession of the three tenants (as mentioned

in the report of the Special Deputy Tahsildar) as per the order dated 31.07.1976 could be accepted or not. On perusal of the records, it is seen that no further report was called for by the Taluk Land Board. The Taluk Land Board narrated the facts in a nut shell and stated about the notices issued to the parties and came to the conclusion, without any discussion, that the declarant is liable to surrender an extent of 21 acres. The manner in which the Taluk Land Board disposed of the case is quite contrary to the provisions of Section 85(5) and 85(9A) of the Land Reforms Act. No report was called for from the Special Deputy Tahsildar and no physical verification of the property was made. There is no discussion in the order about the documents produced in the case or the evidence already available in the case. Even assuming that all the parties who claimed tenancy and their assignees remained absent, the Taluk Land Board could not have simply fixed the ceiling area in the manner in which it was done without arriving at a conclusion as to why the tenancy claim made by the three persons as mentioned in the first report of the Special Deputy Tahsildar could not be accepted. The purchase certificate issued in favour of the tenant is already on record. The order passed by the Land Tribunal in favour of Swaminathan in O.A.No. 763 of 1972 under whom the petitioner Alagiriswami traces title is also on record. Why the purchase certificate was not accepted and why that extent of land held by the tenants is not excluded from the account of the declarant is not stated at all by the Taluk Land Board. A review under section 85(9A) of the Act is not intended to efface the order passed by the Taluk Land Board earlier and to pass an order afresh without considering any of those materials which were available on record before the Taluk Land Board. Any materials which were already on record while passing the order dated 31.07.1976 should have been adverted to and considered by the Taluk Land Board while disposing

of the ceiling proceedings. The order passed by the Taluk Land Board cannot be sustained at all and the matter requires re-consideration by the Taluk Land Board.

For the aforesaid reasons, the order dated 26.04.2000 passed by the Taluk Land Board is set aside and the matter is remitted to the Taluk Land Board for fresh disposal in accordance with law and in the manner indicated above.

K.T. SANKARAN,
JUDGE.

lk

K.T. SANKARAN, J.

.....

C.R.P. No. 1312 OF 2000

.....

Dated this the 7th December, 2007

O R D E R